

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Promoting Efficient Use of Spectrum Through	)	WT Docket No. 00-230
Elimination of Barriers to the Development of	)	
Secondary Markets	)	
	)	

To: The Commission

**JOINT REPLY COMMENTS OF  
THE NATIONAL ITFS ASSOCIATION  
AND THE CATHOLIC TELEVISION NETWORK**

The National ITFS Association (“NIA”) and the Catholic Television Network (“CTN”), by their attorneys, submit these joint reply comments to clarify two matters concerning the potential application of the secondary markets regulatory regime to Instructional Television Fixed Service (“ITFS”) licensees.

In their joint comments filed on December 5, 2003, NIA and CTN focused on questions raised in paragraphs 307 and 308 of the above-captioned Further Notice of Proposed Rulemaking (“*FNPRM*”) concerning the possibility of extending the secondary market policies adopted in this proceeding to ITFS licensees regulated under Part 74 of the Commission’s rules. NIA and CTN supported the extension of the policies adopted in this proceeding to ITFS, subject to three important caveats. First, in order to preserve the educational nature of ITFS, the substantive requirements applicable to ITFS leasing must remain unchanged. Second, in order to avoid unnecessary and disruptive changes to existing ITFS contractual relationships, new rules and policies should be applied on a

prospective basis only. Third, the Commission should clarify that ITFS lease agreements may continue to have a maximum term of 15 years, subject to license renewal.

In reviewing the *FNPRM* and the comments of other parties, NIA and CTN believe that two clarifications are necessary. First, in applying the secondary markets models to ITFS, the Commission must recognize that the parties leasing excess ITFS capacity generally are *not eligible* to hold ITFS licenses themselves. Under Section 74.932 of the Commission's rules, ITFS licenses are issued only to certain accredited schools and other non-profit educational organizations. Typically, however, lessees of excess capacity are for-profit entities seeking to operate commercial communications systems. Although these entities are not eligible to hold ITFS licenses, the Commission has, for over 20 years, permitted (even encouraged) these leasing arrangements as being in the public interest. Given this history and practice, in applying the new rules to ITFS, the Commission will need to exempt lessees of ITFS capacity from Sections 1.9020(d)(2)(i) and (iii), and 1.9030(d)(2)(i) and (iii) which, as currently written, would require lessees of ITFS capacity to be eligible to hold ITFS licenses.<sup>1</sup>

Second, although NIA and CTN supported the continued applicability of the current substantive ITFS leasing requirements in the new secondary market environment, those requirements may need to be modified in two respects under the *de facto* transfer model. Specifically, in their joint comments, NIA and CTN described six substantive requirements currently applicable to ITFS lease agreements:

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<sup>1</sup> In WT Docket. No. 03-66, questions have been raised regarding possible changes to the eligibility requirements for ITFS licenses. NIA, CTN, and others are on record as being firmly opposed to any change in the current ITFS eligibility requirements. Thus, an exemption from Sections 1.9020(d)(2)(i) and (iii) and 1.9030(d)(2)(i) and (iii) is critical for ITFS spectrum leasing to continue if the Commission extends its secondary market policies to ITFS.

(i) there must be certain minimum educational uses of ITFS spectrum (typically, a minimum of 20 hours per 6 MHz channel per week); (ii) for analog facilities, there must be a right to “recapture” an additional amount of capacity for educational purposes (typically, 20 more hours per channel per week); for digital facilities, the licensee must reserve at least 5% of its transmission capacity for educational purposes; (iii) the lease term may not exceed 15 years; (iv) the ITFS licensee must retain responsibility for compliance with FCC rules regarding station construction and operation; (v) only the ITFS licensee can file FCC applications for modifications to its station’s facilities; and (vi) the ITFS licensee must retain some right to acquire the ITFS transmission equipment, or comparable equipment, upon termination of the lease agreement.<sup>2</sup>

However, upon further consideration, NIA and CTN realize that requirements (iv) and (v) may not be appropriate under the *de facto* transfer model. Under that model, an ITFS licensee may not want to retain responsibility for compliance with rules regarding station construction and operation, as that responsibility primarily would shift to the lessee. Also, an ITFS licensee would not necessarily want to have all station modification applications submitted through the ITFS licensee, particularly for leased capacity that, under the proposed new band plan for ITFS/MDS, would be used for low power, cellularized service.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

CATHOLIC TELEVISION NETWORK

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January 5, 2004

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<sup>2</sup> NIA and CTN Joint Comments filed December 5, 2003 at 4.

## **CERTIFICATE OF SERVICE**

I, Donna Kanin, hereby certify that copies of the foregoing Joint Reply Comments of the National ITFS Association and the Catholic Television Network have been served by Hand or by First Class Mail this 5<sup>th</sup> day of January, 2004, on the following:

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